

TESTIMONY BEFORE THE ERISA ADVISORY COUNCIL WORKING GROUP ON
PARTICIPANT BENEFIT STATEMENTS AS REQUIRED BY PPA '06

David L. Wray
President
Profit Sharing / 401k Council of America

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I appreciate this opportunity to provide PSCA's comments to the Advisory Council on Employee Welfare and Pension Benefit Plans of the U.S. Department of Labor ("DOL"). I am David Wray President of the Profit Sharing/401k Council of America. I am joined by Ian Kopelman, Partner, DLA Piper, and PSCA's Legal Counsel.

The Profit Sharing/401k Council of America (PSCA) is a non-profit national association of employers who sponsor defined contribution retirement plans for their workers. For 60 years, PSCA has identified and shared best practices with its members, represented their interests in Washington, and provided analysis and reportage on the latest regulatory changes. PSCA members range in size from very small independent businesses to firms with hundreds of thousands of employees. Our members believe that profit sharing, 401(k), and related savings and incentive programs strengthen the free-enterprise system, empower and motivate the workforce, improve domestic and international competitiveness, and provide a vital source of retirement income.

Our comments today relate to the Defined Contribution-related requirements of Section 508 of the Pension Protection Act of 2006 (the "Act").

First, however, we want to thank DOL for the positive approach taken in the transitional guidance in Field Assistance Bulletin No. 2006-3 (the "FAB"). Not only was this guidance very helpful but it acknowledged the substantial time and expense imposed on plan sponsors in complying with the new requirements, an expense that in many cases will be eventually borne by plan participants. We urge DOL continue to consider these realities as the final guidance under Section 508 of the Act is developed.

I would like to provide some general thoughts about the approach the regulations should take but first let me share with you some of the results of a survey of its members PSCA conducted in 2005 to identify defined contribution participant statement best practices.

2005 PSCA Survey

In 2005 PSCA surveyed 443 plan sponsors about their defined contribution plan participant statements. According to the study, plan sponsors are generally quite satisfied with their participant statements. On a five-point scale, with 5 being "excellent," the average score for "overall rating of statement" was 4.3. Among individual categories scored, "accuracy" received the highest rating, at 4.6. All categories averaged at least a 4.1 or higher.

Table 2: Plan sponsor ratings of participant statements

	<i>Plan Size by Number of Participants</i>					
	1-49	50-199	200-999	1,000-4,999	5,000+	All Plans
Overall rating of statement	4.1	4.2	4.2	4.4	4.2	4.3
Accuracy	4.4	4.5	4.6	4.7	4.6	4.6
Legibility	4.4	4.5	4.4	4.5	4.4	4.5
Timeliness	4.2	4.1	4.2	4.5	4.3	4.3
Usefulness	4.1	4.2	4.1	4.4	4.2	4.2
Clarity	4.1	4.2	4.2	4.3	4.1	4.2
Organization	4.1	4.3	4.2	4.3	4.1	4.2
<i>Rating scale of 1-5: 1="Very Poor"; 2="Poor"; 3="Fair"; 4="Good";5="Excellent"</i>						

As with most PSCA surveys this was a very diverse group with approximately 20 percent of respondents in each of the five company-size categories. Those responding also used a variety of service providers. Defined contribution plan participant statements are successfully getting the job done as this study demonstrates.

Take a Minimalist Approach

Companies sponsor plans to attract, retain and motivate high quality workers. Companies know that for a plan to deliver the maximum value to the bottom line plan participants must be effectively reminded on a periodic basis of how the plan is benefiting them. Further, it is in the interest of plan sponsors to have effective communication to participants so that the plan is more useful and user friendly.

The result has been an increasingly sophisticated approach to defined contribution participant statements. When I was a plan sponsor in the 1980's our participant benefit statement was a one page 8 ½ by 11 black ink on white copier paper form containing information months out of date. Today's participant statement is dramatically different. Its several pages of carefully considered information creatively formatted, often customized for a particular company's workforce, and usually delivered within a month of the quarterly closing date. Printing methods and technology are increasingly married to provide highly personalized information to the participant. In fact, the statements sponsors provide their participants summarizing their defined contribution plan information continue to improve.

It is our recommendation that DOL take a minimalist approach with regard to defined contribution plan participant statements. Of course, DOL has no choice in requiring the specific information required by the new law. However, it should stop there and leave to plan sponsors the decisions about how that information is to be presented and delivered. It is critical that whatever regulation DOL provides for defined contribution plan

participant statements not interfere with the effective delivery of plan-related information. We need to avoid the path taken for other required plan communications like the SPD, SAR and SMM that has limited their use as communication tools, especially for average workers.

For example, the Act states that benefit statements must include any limitation on a participant's rights "under the plan", but the FAB provides that this statement disclosure need not include limitations imposed by investment vehicles or by applicable securities laws. We recommend that the FAB approach be made part of the final regulations. Plan sponsors should be permitted to inform participants how to access this information, rather have it spelled it out in detail on the statement. Certainly, if limitations-related changes are made participants should be informed. However, alternatives like special mailings should be permitted. Defined contribution plan participation is complicated enough without turning what has been a most effective communication tool into a prospectus-like document.

Permit Flexibility in Communication Medium

In most cases, the most effective delivery of defined contribution participant statements may be electronic. Improvements in Internet technology and a drastic increase in Internet access by the employee population now provide plan participants with the ability to review the status of their defined contribution accounts online in "real time." In our soon to be published survey results for 2006 plan practice, just 7.7% of plans are not accessible to participants through the internet, and nearly all that are not are at very small companies. Even these plans will probably soon be internet accessible. Most participants can now see the allocation and value of their plan investments as of the market close on the preceding business day. This gives the participants current information when they want it. This is especially useful for younger workers who expect access to information 24/7.

We need to facilitate the internet as a plan communication medium. Under current law, plans utilizing electronic communication must provide a written version of the communication to participants and beneficiaries without access to a computer, or even those with computer access that prefer a written document from the plan administrator. We are probably several years away from a situation in which there will be no requirement to provide a paper version of an electronically-delivered plan communication.

Electronic communication provides a powerful tool for participants to examine and analyze information. It can permit layering of information from the general to the extremely detailed or for estimating plan balances with a limitless set of variables. However, replicating in a paper format all the features that can be provided electronically may be cost prohibitive. A likely consequence is that plan sponsors will decide to limit an electronic benefit statement system to features that can be easily replicated in a paper format. The DOL should specify that plans utilizing electronic communications are not

required to replicate every feature of the electronic system when providing a paper-based alternative.

Internet access also permits participant access to additional information (e.g., investment fund descriptions or performance over specified periods) by clicking on designated hyperlinks. This approach has the dual advantage of keeping the disclosure of basic information relatively simple yet providing participants with very detailed information if they want it. The regulations should allow plan sponsors the flexibility to decide how best to communicate the information required by the new law with their participants.

The FAB focuses on how and how often notices of statement availability should be provided to participants. The FAB states that the notice may be "furnished in any manner that a pension benefit statement could be furnished under this Bulletin." The delivery methods specified in the FAB are those described in the DOL electronic delivery regulations issued in 2002 and the Internal Revenue Service/Treasury electronic delivery regulations issued in October of last year. DOL should reaffirm the FAB position regarding Internet access on a permanent basis.

The FAB also provides that, pending the issuance of final guidance, good faith compliance with the Act's periodic statement requirements would not preclude the use of multiple documents or sources for benefit statement information. Again the important principle is flexibility.

The Model Participant Statement

The DOL is required to publish a model participant statement. We are concerned that such a model notice could do great harm to the defined contribution plan communications. Unfortunately, many will see such a model as a safe harbor and adopt it regardless of its appropriateness for their participants. To minimize the potential damage PSCA recommends that DOL authorize a working group of defined contribution plan communications specialists to develop a recommended model. The model itself should permit as much customization as possible and should be focus-group tested with participants. Finally, the DOL should clearly communicate that the model statement is for educational purposes only as an example of the type of notice that satisfies the law. PSCA would be pleased to participate in this process.

Fee Disclosure

We would be amiss to talk about employee benefit statements without addressing the issue of plan fee disclosure to participants. A possible outcome of either a DOL or Congressional directive is that the benefit statement will be utilized by plan sponsors to inform participants about plan fees. PSCA's July 24, 2007 response to the DOL's request for information on participant fee disclosure is attached to our testimony. I would like to reiterate our three principles for fee disclosure:

Simplicity - Employees face important decisions when contemplating their participation in a participant directed individual account plan. First, should I participate in this plan? Secondly, what plan investment alternative should I select? These decisions should consider two types of plan fees – the fees for general plan costs and specific procedures that are incurred as the result of plan participation, and the specific fees associated with the investment allocation decision. Only fees paid by the participant are relevant. Precisely calculating plan fees paid by an employer may be impossible. There is no value in breaking the fees down into detailed components. Simplicity is critical to cost minimization.

Sensitivity to costs - Fee disclosure creates costs that will be borne by participants, either directly as an assessment against plan assets or indirectly as an element in employers' overall compensation structures. Obviously, the cost of disclosure varies proportionally with complexity. Fee disclosures should be based on "snap-shot" calculations and the use of estimates and examples. The ability to provide disclosure electronically is critical to minimizing costs.

Flexibility – How fees are disclosed to participants is critical to a successful and cost-effective disclosure program. Only employers, working with service providers, have the insight necessary to craft disclosure programs that will best serve their employees. Employers should be free to decide whether or not to combine fee disclosure with other communications, such as a benefit statement or annual report.

Most government approved model notices are highly legalistic and ineffectively formatted. Today's defined contribution participant statements are cutting edge communications documents. We must protect the current approach.

Thank you again for this opportunity to share with you our views. I would be glad to answer any questions.